HEADMISTRESS, METHODIST GIRLS SCHOOL & ORS.

v.

THE HEADMASTER, ANGLO-CHINESE PRIMARY SCHOOL, LAHAT ROAD, IPOH & ANOR.

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS CJ (MALAYA)
ABDUL HAMID OMAR FJ
EUSOFFE ABDOOLCADER FJ
[CIVIL APPEAL NO. 198 OF 1982]
23 FEBRUARY 1984

TORT: *Negligence - Whether there was contributory negligence - Personal injury - Damages - Occupiers' liability.*

Hew Wan Hoong, an infant aged 9 years old was knocked down by a school bus and sustained serious injuries in the school (Anglo-Chinese Primary School) compound whilst walking home. He sued the appellants, the bus owners and the driver for damages and they brought in the respondents, the Headmaster and the Government under occupiers liability for allowing the bus into the school compound. The trial Judge found the appellants wholly liable and dismissed the claim for contribution against the respondents with costs. They appealed against the trial Judge's decision on the claim for contribution.

Held:

[1] The school authorities as an owner and occupier of the premises are under a duty to keep the school premises safe.

[2] The school authorities must also share the blame with the appellants for allowing the bus into the narrow space in the school compound.

[3] The liability to be apportioned at 30% against the respondents, the school authorities and 70% against the appellants, the bus driver and the bus owners.

[Appeal allowed with costs both for the appeal and the Court below.]

For the appellants - Ng Chee Kong; M/s. Ng Chee Kong & Co.
For the respondents - M. Mahalingam; Senior Federal Counsel

JUDGMENT

Salleh Abas CJ (Malaya):

On 5 June 1973 at about 12.30 p.m. the plaintiff, one Hew Wan Hoong, who was then an infant, aged 9 years old, whilst walking in the compound of his school (Anglo-Chinese Primary School) in order to go home was knocked down by a school bus. He sustained fairly serious injuries. He sued the appellants, (the bus owners, and the driver) for damages and they in turn brought in the respondents (Headmaster of the school and the Government) as the third party claiming for a contribution in the event of lability being found against them on the ground that they as school authorities were also partly liable for allowing the bus to enter the school compound.

The trial Judge found the appellants wholly liable and awarded the plaintiff a sum of RM20,000 as general damages and another sum of RM794 as special damages and dismissed the appellants' claim for contribution against the respondents with costs. The appellants are unhappy that the learned Judge dismissed their claim for contribution and hence this appeal.

The issue raised by their Counsel in this appeal in this: whether the respondents, being the school authorities, in the circumstances of this case, were guilty of contributory negligence in allowing the bus to enter the school compound.

According to the sketch plan (p. 65 of AR) the school buildings consist of four separate blocks, built in such a way as to leave a wide open square space (referred to herein as "the square") in the middle as the school playground. In the centre of the square stands a two-storey building used as the school assembly hall. The principal's office is in the first block right opposite of this hall. At the entrance of the school compound there is a gate, from which a drive-way past a house on the left leads to the square. Outside the gate there is a church. Parents' cars are not allowed to come into the square to pick up their children. The school authorities insisted that they wait for their children outside the school gate by the church. However, teachers' cars are allowed to come in and park in the square and school buses, of which there were only two, were also allowed to come into the square to drop and pick up children. Since this accident, buses are no longer allowed in and since then the school authorities have now posted a big notice board at the entrance prohibiting vehicles from entering. This is the first time a vehicle accident ever occurred in the school compound.

There is clear evidence that the bus would come and stop in front of the principal's office to drop children. After that it would reverse and turn in the direction of the church and then park in front of the principal's office to wait for the children. It was during the course of dropping the children that the bus in the instant case hit the plaintiff who was then peacefully walking on the side of the road in order to go home after school was dismissed. He could not avoid being hit because the road was not only narrow but its side was also bounded by an iron railing. As the bus was being negligently driven, there was hardly any space left for the plaintiff to manoeuvre between the railing and the bus. And, so he was hit and according to the evidence of a teacher who saw the accident, the plaintiff was sand-wiched between the bus and the railing. There being no dispute that the bus was at fault. The question is whether the school authorities were also at fault?

As an owner and occupier of the premises the respondents, the school authorities, are under a duty to keep the school premises safe. They knew that the road was extremely narrow and looking after children being their regular function, they must have appreciated that the children, once dismissed from classes, tend to disperse in all directions in disorderly fashion regardless of cautions their teachers may have given them. The school authorities were correct in preventing parents' cars from coming up to the school's square for safety reason but we do not understand why an exception was made in favour of the two school buses. Surely, buses being the bigger vehicles would pose a greater potential danger especially when the road is so narrow that there is hardly sufficient room for them to manoeuvre. We find ourselves extremely difficult to hold the school authorities free from any blame. In our view they must share the blame with the appellants. But the question is at what proportion? In view of the fact that their fault only consists of allowing the bus to come in, which is a privilege which the bus need not have to make use of, or a risk which it need not have to take, the blame on the school authorities should be a lesser degree than that of the appellants, the bus owners and the driver.

We think it is fair and reasonable that the total liability be apportioned at 30% against the respondents (the school authorities) and 70% against the appellants (the bus owners and the driver).

We would, therefore, accordingly allow the appeal with costs both here and the Court below and order that the appeal deposit should be refunded.

Also found at [1984] 1 CLJ 239